

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, November 12, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Ray Dwyer  
Tom Day  
Walter Schmidt

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Mary E. Finet  
Peggy Tilley

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Mike Kozlowski, Cricket Communications, BA08:066, petitioner  
Atty. James Hammes, BA08:066, representing Cricket Communications  
Dennis and Becky Lutynski, BA08:070, petitioners  
Dale Kolbeck, Architectural Homes by Anders, Inc., BA08:070, architect/builder  
Tom and Deb Sleik, BA08:070, neighbors  
Daniel F. Luce, BA08:067, petitioner  
Barbara Allen, BA08:067, neighbor  
Ricky Roland, BA08:067, son of Barbara Allen  
Laurie Fahrenbruck, BA06:074, petitioner  
Sue Rheingaus, BA06:074, employee  
Tizza Meyer, BA06:074, neighbor  
Fred Storm, BA08:045, petitioner  
Atty. Stephen L. Fox, BA08:045, representing the petitioner  
Randall Melody, BA08:045, consultant for the petitioner  
Atty. Jack Bode, BA08:045, representing James Grinney (a neighbor)  
Larry and Joyce Gregg, BA08:045, neighbors  
Jerri Osenga, BA08:045, neighbor  
Donald Mullett, BA08:045, neighbor  
Dan Christiansen, BA08:045, neighbor  
Richard Szentes, BA89:092, owner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Day *I move to approve the Summary of the Meeting of October 22, 2008.*

The motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Schmidt abstained because he was not present at the meeting of October 22, 2008.

**NEW BUSINESS:**

**BA08:066 WAUKESHA WATER UTILITY (OWNER), CRICKET COMMUNICATIONS (APPLICANT), SCOTT LITTELL (AGENT):**

Mr. Day *I make a motion to adopt the staff's recommendation for denial, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the request for a variance from the height limitation, as set forth in the Waukesha County Airport Height Limitation Zoning Ordinance (HLZO) for the proposed co-location of antennas on an existing water tower. The reasons for the recommendation, as stated in the Staff Report, are as follows:

The purpose and intent of the HLZO is to regulate the use of property and restrict the height of structures and objects of natural growth in the vicinity of the Waukesha County Airport to promote the public health, safety, convenience, and general welfare. It is intended to protect the people living in the vicinity of the Airport, the aircraft taking off from and landing at the Airport, the future uses of the Airport, and the public and private investment in the Airport.

The Airport Commission has indicated in their letter dated October 8, 2008, that in order to receive state aid for the airport, they must adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. Therefore, they have recommended denial of the requested variance.

The Planning and Zoning Division staff feels that although alternative telecommunication antenna location options may not be ideal for the petitioner, a more appropriate and conforming location for such a telecommunication facility may be available and should be utilized so as to not impair or adversely impact the safety of Waukesha County Airport users. The staff feels that the petitioner has failed to demonstrate, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property is currently being used for a permitted purpose and the denial of the variance would not result in an unnecessary hardship, as defined by the Wisconsin Supreme Court. An argument has been made that the proposed antennas would exceed the height of a nearby Waukesha County

communications tower that was constructed in compliance with HLZO requirements at the time. However, the staff feels that the ultimate purpose and intent of the HLZO is to bring noncompliant structures into compliance and not to allow for additional structures to encroach in to the height limitations of the Ordinance. Therefore, it is the opinion of the Planning and Zoning Division staff that the approval of this request would not be with the purpose and intent of the HLZO.

**BA08:070 DENNIS LUTYNSKI:**

Mr. Schmidt

*I make a motion to approve the requested floodplain setback variance to permit the construction of a residence with an attached garage, with the building to be located no less than 38 ft. from the new FEMA floodplain. I believe that granting the requested floodplain setback variance would be within the spirit and intent of the Ordinance and would not be contrary to the public welfare and would not create a nuisance. The newly designated FEMA floodplain is questionable and it would be a hardship to move everything. A residence in a conforming location would be in substantially the same type of soil and at the same elevation as a residence in the proposed location.*

The motion was seconded by Mr. Dwyer. Mr. Dwyer then asked if the reasons could be expanded to note that one of the hardships is that the investment in the driveway and the mound system has already been made. Another reason is that locating the house in a conforming location would cause additional destruction of the environmental corridor and put the driveway closer to the intersection. Further, because the new FEMA floodplain is still an unstudied floodplain the validity of that flood elevation is in question and it would be hardship for an individual to challenge the FEMA flood elevation.

Mr. Schmidt indicated he would accept Mr. Dwyer's comments as an addition to his motion. Mr. Dwyer then noted that the approval should include the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed residence, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed residence and attached garage, no closer than 38 ft. to the 2008 FEMA floodplain (elevation 870 ft.), must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a Zoning Permit, a complete set of house plans, consistent with the plans described at the public hearing, must be submitted to the Planning and Zoning Division staff for review and approval.

Mr. Schmidt indicated that he would accept Mr. Dwyer's recommended conditions as an addition to his motion. The revised motion was seconded by Mr. Dwyer and carried with four yes votes. Mr. Day voted no.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variance from the floodplain setback requirement of the Waukesha County Zoning Code, to permit the construction of a single-family residence with an attached garage. The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested floodplain setback variance would not prevent the property from being used for the permitted purpose of single-family residential use, since a conforming building site exists on the property. While the petitioner may desire to construct his residence in the originally planned location, it has not been demonstrated that it would be unnecessarily burdensome to locate the residence within the conforming building envelope. Therefore, approval of the requested floodplain setback variance would not be in conformance with the purpose and intent of the Ordinance.

**BA08:067 DANIEL F. LUCE:**

Mr. Day *I make a motion to adopt the staff's recommendation for denial, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Schmidt and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of after-the-fact variances from the offset and floor area ratio requirements, to permit the screen porch to be retained and **denial** of after-the-fact variances from the offset, shore setback, floor area ratio, and accessory building height requirements, to permit the playhouse to be retained. The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested after-the-fact variances would not prevent the property from being used for the permitted purpose of single-family residential use and it has not been demonstrated that denial of the requested after-the-fact variances would result in an unnecessary hardship that is not self-created by the petitioner. Therefore, approval of the requested variances would not be in conformance with the purpose and intent of the Ordinance.

**BA08:069 JEFF AND PATTI LANGER:**

The hearing was held in abeyance until December 10, 2008, at the request of the petitioner.

**OTHER ITEMS REQUIRING BOARD ACTION:**

**BA08:074 GARY AND LAURIE FAHRENBRUCK:**

Mr. Bartholomew *I move to reconsider the decision made by the Board of Adjustment on December 14, 2006, to grant a special exception from the accessory building floor area ratio requirement and variances from the offset, floor area ratio, and open space requirements of the Waukesha County Zoning Code, to allow multiple greenhouse structures and several other accessory structures to remain.*

The motion was seconded by Mr. Dwyer. The motion was carried with three yes votes from Mr. Ward, Mr. Bartholomew, and Mr. Day. Mr. Schmidt and Mr. Dwyer voted no.

Mr. Schmidt *I move to eliminate Condition No. 4 and amend Conditions No. 1 and 2, as set forth in the Revised Memorandum from Peggy Tilley, dated November 12, 2008, for the reasons stated in the Revised Memorandum, with the second sentence in Condition No. 1 modified to read as follows:*  
  
*“The total square footage of accessory buildings and structures on the property shall not exceed 46,967 sq. ft., with no single building or structure to exceed 2,700 sq. ft.”*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff’s recommendation, as stated in the Revised Memorandum from Peggy Tilley, was to eliminate Condition No. 4, which required the petitioners to reduce the number of commercial vehicles on the property to no more than one (1) or submit a request for a Conditional Use Permit, and to amend Conditions No. 1 and 2 to read as follows:

1. The number of accessory buildings and structures on the property shall be limited to thirty-two (32) buildings and structures. The total square footage of accessory buildings and structures on the property shall not exceed 46,967 sq. ft. The petitioner must obtain a Zoning Permit for any modification to an existing structure or the construction of any new structures on the property.
2. All existing and future proposed accessory structures, including the greenhouses (except the 28.5 ft. x 92.7 ft. greenhouse), and the maintenance shed must be located at least 30 ft. from any property line which abuts a property that is not owned by the petitioner. The 28.5 ft. x 92.7 ft. greenhouse may remain in its current location of approximately 28 ft. from the south lot line. The greenhouses and accessory structures do not have to meet the offset requirements from any property line which abuts a property that is owned by the petitioner. Any structure which does not meet the above requirements, shall be relocated prior to October 31, 2007. All other items relating to the operation of the business, including the dumpsters, must be located on the subject property and not over the

property lines. A Declaration of Restrictions must be filed against both the subject property and the adjacent property to the north, also owned by the petitioner, stating that if either property is sold, transferred, or gifted to anyone other than the petitioner, all accessory structures must be relocated to adhere to the 30 ft. offset requirement. The Declaration of Restrictions shall be signed by the owners and recorded in the Waukesha County Register of Deeds office prior to April 1, 2007.

The reasons for the recommendation, as stated in the Revised Memorandum, are as follows:

The Planning and Zoning Division staff feels that the three box trucks in question are integral to the agricultural use on the site and should be considered agricultural equipment. Amending Condition No. 1 will allow the petitioner to maintain the operation with new or modified structures as long as they obtain a Zoning Permit for said new or modified structures and as long as they do not exceed the total number of structures and the total square footage of the structures as approved by the Board. Amending Condition No. 2 will allow one structure to be located 28 ft. from the south lot line, while all other structures will still need to meet the required offset from property lines that abut a property that is not owned by the petitioner. The particular greenhouse in question is well screened by vegetation from view from the adjacent property to the south and only encroaches into the required offset by 2 ft. The staff feels that the amendments to the conditions, as recommended, will be within the purpose and intent of the Ordinance.

**BA08:016 JAMES AND JOYCE HUNZINGER:**

Mr. Schmidt *I move to reconsider Condition No. 1 of our approval of variances from the floor area ratio and open space requirements to permit the construction of a new single-family residence, attached garage and deck that was granted on April 11, 2007.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Schmidt *I move to adopt the staff's recommendation to amend Condition No. 1 of the previous approval, as set forth in the Memorandum from Sheri Mount, dated November 12, 2008, for the reasons stated in the Memorandum.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation, as stated in the Memorandum from Sheri Mount, was to amend Condition No. 1 to read as follows:

"The existing residence must be removed from the property within 90 days of issuance of the Zoning Permit."

The reasons for the recommendation, as stated in the Memorandum, are as follows:

The approval of the request to amend Condition No. 1 of the Board's April 11, 2007 decision, as recommended, does not alter the spirit and intent of the Board's original decision. Therefore, the approval of this request, as recommended, remains in conformance with the purpose and intent of the Ordinance.

**BA08:045 FRED AND PATRICIA STORM (OWNERS) STEPHEN L. FOX (ATTORNEY):**

*A motion for reconsideration was not made. Therefore, the Board of Adjustment did not reconsider their decision of August 27, 2008.*

The Planning and Zoning Division staff's recommendation, as stated in the Memorandum from Peggy Tilley, was that this matter **not be reconsidered**, but if the Board chooses to open this matter up for reconsideration, the Planning and Zoning Division staff maintains its previous recommendation for **denial** of the request for a variance from the floor area ratio requirements of the Ordinance for the reasons stated in the original Staff Report, dated August 27, 2008.

**BA89:092 RICHARD SZENTES:**

Mr. Day *I move to reconsider our decision of August 23, 1989, regarding the approval of an offset variance for a detached garage and consider the request to modify Condition No. 1 of that approval, which limited the size of the garage to 24 ft. x 36 ft.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

Mr. Ward *I make a motion to adopt the staff's recommendation to amend Condition No. 1 of the offset variance granted for the detached garage on August 23, 1989, as set forth in the Memorandum from Sheri Mount, dated November 12, 2008, which will change the limitation on the size of the garage from 24 ft. x 36 ft. to 1,014 sq. ft. The revised condition shall also state that the garage addition must be in conformance with all Ordinance requirements.*

The motion was seconded by Mr. Day and carried unanimously.

The Planning and Zoning Division staff's recommendation, as stated in the Memorandum from Sherri Mount, was to amend Condition No. 1 to read as follows:

"The garage must be limited in size to 1,014 sq. ft. With the existing shed on the property, this results in an accessory building floor area ratio of 3%. The main portion of the garage that measures 24 ft. x 36 ft. must remain 6 ft. from the south lot line, as measured to the foundation, and 5 ft., as

measured to the overhang. The addition shall not exceed 10 ft. x 15 ft. and shall be located a minimum of 10 ft. from the south lot line as measured to the foundation with overhangs not exceed 2 ft. The addition shall be one-story only. If there is attic area above the proposed addition, it shall have a floor to ceiling height of less than 6 ft. in all areas.”

**APPROVE THE ATTENDANCE OF BOARD OF ADJUSTMENT MEMBERS AT A ZONING BOARD OF APPEALS AND ADJUSTMENT WORKSHOP**

Mr. Bartholomew                      *I move to approve the attendance of Board of Adjustment members at the Zoning Board of Appeals and Adjustment Workshop sponsored by the Center for Land Use Education, the City of Beloit, the Wisconsin County Code Administrators, and the Wisconsin Department of Natural Resources, to be held at the Beloit Vision Center on December 8, 2008.*

The motion was seconded by Mr. Day and carried unanimously.

**ADJOURNMENT:**

Mr. Schmidt                              *I move to adjourn this meeting at 10:20 p.m.*

The motion was seconded by Mr. Day and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment